

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

WSOU INVESTMENTS, LLC,	.	Case Nos. 6:20-CV-00473-ADA-DTG
	.	6:20-CV-00475-ADA-DTG
Plaintiff,	.	6:20-CV-00476-ADA-DTG
	.	6:20-CV-00477-ADA-DTG
	.	6:20-CV-00480-ADA-DTG
v.	.	6:20-CV-00481-ADA-DTG
	.	6:20-CV-00482-ADA-DTG
DELL TECHNOLOGIES, INC.,	.	6:20-CV-00485-ADA-DTG
et al.,	.	6:20-CV-00486-ADA-DTG
	.	
	.	<b>**VIA ZOOM TELECONFERENCE**</b>
	.	
Defendants.	.	Wednesday, April 13, 2022
. . . . .	.	2:31 p.m.

TRANSCRIPT OF DISCOVERY HEARING  
BEFORE HONORABLE DEREK T. GILLILAND  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES VIA ZOOM TELECONFERENCE:

For the Plaintiff:	Steckler Wayne Cherry & Love
	By: MARK D. SIEGMUND, ESQ.
	8416 Old McGregor Road
	Waco, Texas 76712
	 Kasowitz Benson & Torres, LLP
	BY: HEATHER S. KIM, ESQ.
	DARCY L. JONES, ESQ.
	333 Twin Dolphin Drive, Suite 200
	Redwood Shores, California 94065
	 Kasowitz Benson & Torres, LLP
	BY: SHELLEY IVAN, ESQ.
	1633 Broadway
	New York, New York 10019

APPEARANCES CONTINUED ON NEXT PAGE.

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

APPEARANCES VIA ZOOM TELECONFERENCE (CONTINUED):

For the Defendants: Gibson, Dunn & Crutcher LLP  
BY: BENJAMIN HERSHKOWITZ, ESQ.  
ALLEN KATHIR, ESQ.  
200 Park Avenue 47  
New York, New York 10166

Gibson, Dunn & Crutcher LLP  
BY: JAYSEN S. CHUNG, ESQ.  
555 Mission Street, Suite 3000  
San Francisco, California 94105

Gibson, Dunn & Crutcher LLP  
BY: NATHANIEL R. SCHARN, ESQ.  
3161 Michelson Drive  
Irvine, California 92612

Winston & Strawn  
BY: BARRY K. SHELTON, ESQ.  
2121 North Pearl Street, Suite 900  
Dallas, Texas 75201

Deputy Clerk: Melissa Copp  
U.S. District Court  
800 Franklin Avenue, #140  
Waco, Texas 76701

Transcription Company: Liberty Transcripts  
7306 Danwood Drive  
Austin, Texas 78759  
(847) 848-4907  
www.libertytranscripts.com

INDEX

	<u>PAGE</u>
Case called	4
Court Rulings on Discovery Disputes	32
	59
	68
	71
	77
End of Proceedings	84
Certificate of Transcriber	84

1           WACO, TEXAS, WEDNESDAY, APRIL 13, 2022, 2:31 P.M.

2           THE COURT: Okay. Welcome everybody. It's good to  
3 see everybody.

4           Ms. Copp, will you please call the case?

5           THE CLERK: Yes, Your Honor.

6           Calling Case Number WA:20-CV-473, 475, 476, 477, 480,  
7 481, 482, 485, and 486, styled WSOU Investments, LLC, Doing  
8 Business As Brazos Licensing and Development v. Dell  
9 Technologies, Inc., et al., called for a discovery hearing.

10          THE COURT: Okay. And I understand we're here on  
11 several discovery disputes. I would like to make a preliminary  
12 reminder for everybody. We're operating without a live court  
13 reporter, so it will be important that you please introduce  
14 yourself somewhat like you would on a conference call each time  
15 you start speaking, and make sure to speak clearly into your  
16 microphone. And if for some reason it's hard to hear you, I'll  
17 ask you to speak up.

18          Could I get announcements from plaintiff, please,  
19 starting with the plaintiff?

20          MR. SIEGMUND: Good afternoon, Your Honor. This is  
21 Mark Siegmund with Steckler Wayne Cherry & Love on behalf of  
22 Brazos Licensing and Development. With me this afternoon are  
23 my colleagues, Heather Kim, Shelley Ivan, and Darcy Jones. Ms.  
24 Kim and Ms. Ivan will be the main speakers today, Your Honor.  
25 And we are ready to proceed.

1 THE COURT: Very good. Welcome.

2 And could I get announcements from Defendants? I  
3 know we have several, so I see Mr. Shelton in the top left of  
4 my screen so let's start with Mr. Shelton.

5 MR. SHELTON: Thank you, Your Honor. And  
6 congratulations on your appointment, and it's my pleasure to  
7 appear before you for the first time. Barry Shelton of Winston  
8 & Strawn, LLP. I'm local counsel for defendants, and I'd like  
9 to introduce most importantly our client representatives. We  
10 have Britta Haskell from the Dell defendants, Danielle Coleman,  
11 and Rachel Chen from VMware.

12 Also my colleagues from Gibson Dunn & Crutcher,  
13 Benjamin Hershkowitz, Allen Kathir, Jaysen Chung, and Nathaniel  
14 Scharn. And Mr. Hershkowitz will be arguing for the  
15 defendants. Thank you, Your Honor.

16 THE COURT: Very good. Welcome everybody and  
17 especially to the client representatives who are taking their  
18 time to attend the proceedings. The discovery dispute hearings  
19 are not the most exciting part of any case, but I'd say they  
20 are a very important part. So I'm glad you're here.

21 And with that, I guess I'm looking at I believe it's  
22 Dispute Chart Number 1 regarding reasonably similar products.  
23 I believe it's the plaintiff's -- or the movant, so to speak.  
24 So why don't we start with argument from the plaintiffs on the  
25 issue of reasonably similar products.

1 MS. KIM: Good afternoon, Your Honor. Heather Kim  
2 from Kasowitz Benson Torres on behalf of plaintiff.

3 First of all, Your Honor, I didn't know if you have  
4 any questions off the bat that I may answer for you with  
5 respect to this particular dispute.

6 THE COURT: Not right off the bat. Why don't you lay  
7 out your argument since you've seen both -- I've seen both  
8 parties' positions and read those, so.

9 MS. KIM: Okay. Thank you, Your Honor.

10 In addition to what's been set forth in our briefing,  
11 in response to some of the positions that defendants have  
12 taken, we'd like to just take those up one by one. First off,  
13 Your Honor, the products that we are seeking the discovery on  
14 were accused the whole time. We have not removed them. They  
15 are still in our complaint to this date.

16 Defendants also say that the hardware has not been  
17 accused in our final infringement contentions. That is also  
18 not true, Your Honor. We can go ahead and cite to portions of  
19 our final infringement contentions that have those. Notably,  
20 one of them that sticks out in my mind is Figure 8. And it is  
21 on defendants to let us know really if the software is accused,  
22 software doesn't just run by itself alone somewhere. It does  
23 normally go with hardware products, as well. I'm not super  
24 tech savvy, but that's something that I can reasonably  
25 understand.

1           A second decision is that we had asked them -- and  
2 this kind of goes with our I think it's Issue Number 3 on  
3 request to supplement their response to our Interrogatory  
4 Number 1 to include information on these other reasonably  
5 similar products.

6           But with that in mind, Your Honor, we did ask them in  
7 an interrogatory to set forth all products, all devices that  
8 have the accused functionality. They have refused and failed  
9 to identify all products which are the products that we're  
10 fighting about here today in front of Your Court.

11           A third point that I'd like to raise with you, Your  
12 Honor, is that they have only given us -- they've given us  
13 productions as recently as late February. And so we had been  
14 combing through all the documents that they've given us, which  
15 they I think enumerate in the chart right below this one. They  
16 note a bunch of documents, how many there are, and, you know,  
17 hundreds of thousands of pages. So we've been sorting through  
18 all of that.

19           And when we saw that documents with respect to the  
20 products that are identified in our Exhibit 1 to the attached  
21 dispute chart here, they were missing, we went and we asked  
22 them when we raised this issue with them in February as well,  
23 Your Honor. And that is when they told us that, you know, we  
24 are in an impasse. We're not going to give you discovery on  
25 these products.

1           And with that, Your Honor, I don't know if you have  
2 any other questions or if you'd like to hear anything further  
3 from me.

4           THE COURT: Well, I am curious can you point me to  
5 the specific exhibit? I think we've got the zip file full of  
6 exhibits.

7           MS. KIM: Mm hmm.

8           THE COURT: Which one identifies the what you've  
9 termed reasonably similar products?

10          MS. KIM: It's going to be the Word document. I  
11 believe that one is titled "Exhibit 1-Chart of Reasonably  
12 Similar Products." Do you see that on your end, Your Honor?

13          THE COURT: I do. I do. Okay.

14          MS. KIM: That's the one, Your Honor.

15          THE COURT: That's what I was -- I thought that would  
16 be what you're referring to. Was this Exhibit 1, was it  
17 included or part of infringement contentions?

18          MS. KIM: It was not a part of our infringement  
19 contentions, Your Honor. No.

20          THE COURT: Okay. And what in the infringement  
21 contentions would have identified these reasonably similar  
22 products?

23          MS. KIM: They would have been in our complaint. I  
24 believe they are also in our preliminary and our final  
25 infringement contentions. And it wouldn't be every single one,



1 for example, I don't believe of these specific models that we  
2 have here. But we do allege and accused, for example, the  
3 PowerEdge servers.

4 THE COURT: Okay. So it -- and just so I make sure I  
5 follow you correctly then, what I am referring to as Exhibit 1,  
6 the Word document that you provided to us, that specifically  
7 was not part of the infringement contentions but the products  
8 that are identified in this Word document Exhibit 1 were  
9 referenced in the complaint, preliminary, and infringement  
10 contentions?

11 MS. KIM: Correct, Your Honor. The three -- the  
12 broad categories that you see there. Yes, Your Honor.

13 THE COURT: Okay. And the broad categories, is that  
14 like the left-hand column?

15 MS. KIM: Yes, Your Honor.

16 THE COURT: Okay. Okay.

17 Okay. Let me hear a response from -- I believe, Mr.  
18 Hershkowitz, are you going to be speaking?

19 MR. HERSHKOWITZ: I will, Your Honor, and thank you.  
20 And, again, welcome to the bench and welcome to this show. I'm  
21 hoping that you will not get tired of my voice by the end of  
22 this since I'll be handling all the arguments. And I'm also  
23 hoping that about half of these arguments should have been  
24 mooted by recent productions, et cetera. But, unfortunately,  
25 this is not one of them.

1           So let me dive in and address what Ms. Kim said  
2 initially, and then I'll go back and talk about some other  
3 things. So, number one, with respect to her statement on  
4 documents, 98 percent of the documents that had been produced  
5 were done pre-November of last year. And the reason was we  
6 were supposed to have a close of discovery in December.

7           At the time, another law firm who is representing  
8 plaintiff reached out to us. The parties agreed on an  
9 extension at that time and extended discovery. So we were  
10 already basically done because discovery was supposed to have  
11 been ending within a month, approximately, of when that  
12 extension got put into place.

13           So as to going through additional documents and  
14 everything else, two percent more has been produced since that  
15 time. When they asked us to go back and look for documents --  
16 and these are some of the later issues -- we did. We found a  
17 few other things that simply got missed in our first  
18 proportional reasonable searches of what was going on, and that  
19 information was produced.

20           But that's not the issue that's here. The issue  
21 that's here is the issue of whether or not we can put the cart,  
22 as they are trying to do, before the horse. Specifically  
23 Judge, the contentions are supposed to define the metes and  
24 bounds of what they believe is infringing. And it's very  
25 interesting the phraseology that they're using which is

1 reasonably similar to those identified by WSOU.

2 But what's also interesting is they didn't bother to  
3 submit those contentions. There's a reason why. Because they  
4 simply did not chart any of the products -- and I'm going to  
5 break this down into two things. There are two of the patents,  
6 the '800 and the '133, where the accused functionality is in  
7 software made by and provided by VMware. And I'll address the  
8 Dell patent separately. But let me start there.

9 And they go through limitation by limitation and  
10 identify what they allege is accused, what they allege, Judge,  
11 is software. There's no dispute that software has to run on  
12 hardware. There's also no dispute you have to plug in the  
13 hardware and get electricity which has to be generated by the  
14 power station, et cetera. But there's a logical definition of  
15 what is at issue. And they defined it, that logical definition  
16 is the software.

17 And, yes, Ms. Kim is referring back to the complaint.  
18 But the complaint was superseded by their contentions. And the  
19 OGP is clear. Preliminary contentions set forth where in the  
20 accused products each element of the asserted claims are found.  
21 They pointed to software. There's no dispute the software runs  
22 on hardware.

23 The question is why do they need any of that  
24 information and why should we have to provide that information  
25 where what they've accused and what they have said meets the

1 limitations of their claims is software. And, in fact, when we  
2 look at this, we can see if you go to the contentions, which  
3 unfortunately you don't have -- they did not provide them to  
4 you -- they define the scope of those accused products.

5           Nowhere do I hear them coming forth and saying the  
6 hardware operates the same way as the software. What they're  
7 saying is the software runs on hardware. And they've  
8 identified -- for the first two patents, they've identified  
9 hardware that has been publicly known, it's out there. You can  
10 find it by googling what that hardware is. It's long been out  
11 there. So these are not newly developed products. These are  
12 not products that were kept hidden from them, as Ms. Kim  
13 indicated.

14           They had identified a broad category in their  
15 complaint but they never ever pursued that in their  
16 contentions. And I don't think you will hear plaintiffs say  
17 that they're saying that the hardware products operate the same  
18 as the software products. I think what you're going to hear  
19 them say is the software products run on hardware products.

20           No dispute software runs on hardware, Judge. The  
21 question is why do they need that. And we did provide them  
22 with other information, financial-related information beyond  
23 just the software. So it can't be that either.

24           And so they defined what it is that they said was  
25 infringing, and that's software for the -- what I'll call the

1 '800 patent which is one of the three that are identified. It  
2 is on the Exhibit 1. You'll see it's the middle one, the Dell  
3 PowerEdge servers is what they're now doing. They've got this  
4 litany of products which they can nowhere point to in their  
5 contentions.

6           And as a matter of fact, if you look at the cover  
7 page of their contentions -- I shouldn't say the cover page --  
8 the first page of those two contentions that they have as to  
9 the '800 patent and the '133 patent, it says as follows:  
10 "Certain contentions in the chart below are described with a  
11 reference to the exemplary product vSphere by VMware, Inc."  
12 They then say the exact same thing except with respect to  
13 VeloCloud and what they say SD-WAN by VMware where they then  
14 acknowledge that SD-WAN stands for Software-Defined WAN, in  
15 other words, the software.

16           All of the documents that they are pointing to in  
17 their final contentions -- eight exhibits for one, four  
18 exhibits for the other -- are all VMware software, guides, and  
19 products, et cetera. So in short, the hardware for those  
20 products are simply not in the case.

21           And as to their interrogatory which is Issue 3, but  
22 since Ms. Kim raised it, I'd like to address it, too. We told  
23 them right off the bat, we said to them in there, we said:  
24 "Defendants will respond to this interrogatory and only with  
25 respect to what they understand to be the subject to WSOU's

1 infringement contentions."

2           This is back the middle of last year, Judge. We  
3 wrote to them when they raised this dispute for the first time,  
4 and we said tell us what it is that you think is infringed  
5 that's beyond your contentions and why. They categorically  
6 refused to do so. We wrote them letters, Judge, back in 2000  
7 when they first gave us their original preliminary infringement  
8 contentions, and we said please provide a complete list by  
9 model number or name of the accused products for each patent.  
10 And we told them in that letter that we understood it to be the  
11 software that (indiscernible). They never did so.

12           So this is them attempting to completely shift the  
13 burden that the OGP places on them to identify the products and  
14 services that they believe are accused and meet the limitations  
15 of their claims. And they shouldn't be seen to try to shift  
16 that burden to us. These are not, quote/unquote, reasonably  
17 similar products to those identified in their contentions.

18           Turning now -- well, let me pause there for a minute,  
19 Judge, and then I'll turn to the third patent which is one  
20 that's asserted only against Dell.

21           THE COURT: Go ahead.

22           MR. HERSHKOWITZ: Thank you, Your Honor.

23           And so with respect to that, this last patent they  
24 accuse the Smart OS10 software. And here, Judge, we have a  
25 little bit of a different situation. We all know that OS runs

1 on hardware. And as a matter of fact, it is the operating  
2 system for a number of products that are listed in that Exhibit  
3 1. There's no dispute about that. It absolutely is.

4           However, what they also know is that the only thing  
5 the software does is make calls out to a chip, a chip made by  
6 Broadcom. And for the chip made by Broadcom, they actually  
7 have sought and were successful in getting Judge Albright to  
8 give them permission -- despite the parties' agreement that no  
9 new discovery would be taken, to get permission to seek that  
10 discovery from Broadcom.

11           The rest of the hardware, Judge, no question that it  
12 is not relevant to what we are going on -- or to what is going  
13 on. They don't identify it as such when you go through their  
14 contentions. All they really do is focus on the OS and now  
15 they're going to be focusing on the chip.

16           And so we also gave them, Judge, the financial  
17 information about those hardware products. Why? Because we  
18 know that hardware only -- software only runs on hardware, and  
19 because it's an operating system, it's not a separately priced  
20 item. And so we gave them the financial information for the  
21 very product. In fact, their list appears to come from the  
22 financial document that we provided to them.

23           So it's not a question that they need this for  
24 financial purposes. This is them once again not explaining  
25 anywhere how the accused software is reasonably similar now to

1 the hardware they're seeking or why that hardware is even  
2 remotely relevant to what's going on. You know, they're not  
3 explaining why their products are similar, and in no way  
4 notified us in their contentions as to why they believed that  
5 that hardware is at issue.

6 So, Judge, let me pause there and see if you have any  
7 questions. If not, I'm sure plaintiff will have a response.

8 THE COURT: Okay. Let me ask you just to make sure  
9 I'm following you real quick. So I'm looking at the Word  
10 document titled "Exhibit 1."

11 MR. HERSHKOWITZ: Yes.

12 THE COURT: And it was in the zip file under folder  
13 "Chart 1 Exhibit 1 Chart of Reasonably Similar Products." And  
14 so the last part that you're referring to, the software, the  
15 OS10, I assume that's the Smart Fabric Operating System 10 that  
16 relates to the '144 patent?

17 MR. HERSHKOWITZ: It does, Your Honor.

18 And I should also mention that I believe Ms. Kim made  
19 a misstatement because I don't believe that they had identified  
20 broad categories of hardware in their complaint. And so I just  
21 wanted to make that point as I'm looking because I had a note  
22 next to it.

23 So if you're looking at that Exhibit 1, Your Honor,  
24 so the '800 patent was asserted against VMware software. The  
25 '133 patent at the top was asserted against VMware software.



1 And at the bottom, the '144 patent was asserted against that  
2 Smart Fabric Operating System software.

3 And they're now seeking discovery with respect to the  
4 chip because they learned through looking at the software that,  
5 in fact, all the software does is make calls to the chip. And  
6 so the functionality that they're seeking is not within our  
7 possession and control, but that of a third party, Broadcom,  
8 whose chip is included in the products.

9 THE COURT: Okay. And so back to the chart, the  
10 Smart Fabric Operating System 10, I guess the dispute -- at  
11 least I'm trying to get this into more manageable sizes for  
12 myself. The dispute as I understand it with regard to the '144  
13 patent, then, is whether or not you need to provide documents  
14 regarding the hardware that's listed in that right-hand column  
15 under devices On Which Sun Fabric OS10 runs?

16 MR. HERSHKOWITZ: That is my understanding, Your  
17 Honor.

18 THE COURT: Okay. And Dell is the party against whom  
19 this patent is asserted?

20 MR. HERSHKOWITZ: Correct. So just to be clear, Your  
21 Honor, is originally, there were 12 patents, 8 of which were  
22 only asserted against Dell. Three of those have been dropped,  
23 and a fourth the parties attempted to drop but I think we  
24 somehow made a mistake in our filing. And so the fourth patent  
25 will be dropped.

1           So there are now four patents against Dell only, and  
2 there are four patents where VMware is accused along with Dell  
3 but really the accusations are directed to VMware's software in  
4 those cases. And two of those cases are the '133 and the '800  
5 patent that are there.

6           THE COURT: Okay. And we'll get -- we'll back up on  
7 to those just taking it a step at a time for myself.

8           So if I understand you correctly, then, Dell has  
9 produced the financial data related to the products under Smart  
10 Fabric OS10 in the bottom of Exhibit 1 but has not produced the  
11 technical documents related to those hardware products?

12           MR. HERSHKOWITZ: We produced information about the  
13 hardware to the extent that it's clear which -- what platform  
14 the software is running on, which are the products listed, with  
15 one caveat, Judge. ESXi Host is actually a piece of software  
16 that's involved with the OS10 operating system. So I believe  
17 that that's simply a misunderstanding on behalf of plaintiff.

18           THE COURT: Okay. And then so has the ESXi Host  
19 software, the information regarding it, has it been produced or  
20 is it at issue in this dispute, as well?

21           MR. HERSHKOWITZ: I'm not aware that it should be at  
22 issue at all in this dispute, Judge, but I don't have that  
23 exact data point at my fingertips.

24           THE COURT: Okay.

25           And, Ms. Kim, let me ask you just sticking with that

1 last chart on Exhibit 1. So are those products under Sun  
2 Fabrics OS10, the right-hand column, are those the products  
3 with regard to the '144 patent where you want more documents  
4 concerning that hardware?

5 MS. KIM: That's correct, Your Honor.

6 THE COURT: Okay. And so that -- at least with  
7 regard to the '144 patent, that's what we're going to call the  
8 reasonably similar products for purposes of today, at least?

9 MS. KIM: Correct, Your Honor.

10 THE COURT: And can you respond to Mr. Hershkowitz's  
11 statement that it is a software patent, so explain to me why  
12 you need hardware-related documents.

13 MS. KIM: Yes, Your Honor.

14 I think there is no dispute, as Mr. Hershkowitz's  
15 confirmed, that the software runs on the hardware. And there  
16 is going to be, I would imagine not being a very tech-savvy  
17 person, a relationship of how the hardware is implementing the  
18 software code and the relationship between those things.

19 And so with that respect, Your Honor, we are looking  
20 for technical documentation on that. I also didn't hear Mr.  
21 Hershkowitz dispute that the accused functionality is running  
22 on the hardware that we have identified in our Exhibit 1 chart,  
23 as well. So there's no dispute really that the software, the  
24 SmartFabric in the '144 patent case is running on the switches  
25 that we've identified in that chart. And I don't think there's

1 a dispute that there is a relationship between the software and  
2 the hardware to figure out exactly how it's being implemented.

3 THE COURT: And just sticking with this OS10 in that  
4 bottom table, was there ever a specific request made for  
5 documents related to the hardware?

6 MS. KIM: I believe so, Your Honor. I think that was  
7 sent out in February of this year.

8 And I do want to note for Your Honor I understand  
9 that they had produced 98 percent of their documents last year.  
10 I checked with my team and I believe 35,000 pages were produced  
11 since we came into the case around Christmas. So that would  
12 have been their February productions.

13 THE COURT: Okay. And then let's back up to the  
14 first table on Exhibit 1, the Dell EMC SD-WAN Edge, and the  
15 '133 patent. And do you agree with Mr. Hershkowitz that that  
16 '133 patent is, generally speaking, asserted against software  
17 made by VMware?

18 MS. KIM: I believe both that one and the one  
19 underneath -- so this is the EMC SD-WAN Edge servers as well as  
20 the Dell PowerEdge servers. They contain the Verosphere, I  
21 believe it's called, and that's the accused software  
22 functionality.

23 And in Defendants' chart, actually, they provide a  
24 citation saying that their original complaint for the '133  
25 patent identified the Dell EMC SD-WAN Edge 600 Series product

1 which is the software that is shown in the right-hand column of  
2 that first chart, Your Honor.

3 THE COURT: Okay.

4 MS. KIM: So we did identify that.

5 THE COURT: I'm sorry. Go ahead.

6 MS. KIM: So we did identify that, the hardware.

7 THE COURT: Okay. And so the -- I guess for the '133  
8 and the '800, the reasonably similar product's hardware that  
9 we're talking about, then, is going to be the right-hand  
10 columns of those two middle charts on Exhibit 1?

11 MS. KIM: Correct, Your Honor.

12 Yeah. I think they were like -- so it's the product  
13 category that you see on the very left, and then there are the  
14 number or sort of rack or tower series, and then there's like  
15 the subseries that you see in the far right side. So we broke  
16 it down the best we could.

17 THE COURT: Okay. And how -- again, same question  
18 that we had with regard to OS10. How is the production of  
19 technical documents or documents related to hardware necessary  
20 for the infringement read on -- that reads on software?

21 MS. KIM: Yes, Your Honor.

22 I think similarly to the '144 patent for SmartFabric,  
23 there is a relationship between hardware and software. And in  
24 (indiscernible) experience or at least my experience in  
25 litigating patent cases so far, even when, for example, it's a

1 Broadcom chip that's going to be implementing certain  
2 functionalities of the accused technology, there is still  
3 sometimes, in my experience at least, where the defendant is  
4 actually going in and working sometimes with that third-party  
5 chip manufacturer such as Broadcom to have specific  
6 requirements to be putting into their product so that they  
7 actually do work with the hardware that they sell.

8           And I do want to note, Your Honor, that defendants  
9 only recently as in yesterday produced financials for VMware  
10 which encapsulates 50 percent of the cases at this time.

11           THE COURT: Fifty --

12           MS. KIM: So we just got the financials.

13           THE COURT: Fifty percent --

14           MS. KIM: Yeah, four out of the eight cases are  
15 against VMware. And we just got --

16           THE COURT: Oh, okay.

17           MS. KIM: -- the financials yesterday.

18           THE COURT: Gotcha. I caught you. I wasn't sure  
19 what 50 percent of the cases specifically meant.

20           MS. KIM: Sorry.

21           THE COURT: That's okay.

22           MS. KIM: I'm horrible at math, but hopefully four  
23 out of eight is 50 percent.

24           THE COURT: Okay. Okay.

25           MR. HERSHKOWITZ: Judge, if I could take just two

1 seconds to respond?

2 THE COURT: Absolutely.

3 MR. HERSHKOWITZ: So, again, you said to introduce.

4 So it's Benjamin Hershkowitz so that we've got the record  
5 straight, although I think Ms. Kim and my voice are different  
6 enough that we shouldn't have any confusion on the record.

7 But just very very quickly. There's just some things  
8 that are just wrong. If we go back to the two VMware --  
9 patents asserted against VMware, it's really all about the  
10 software. Every claim, every limitation, what they are  
11 pointing to is software. There's no question that software has  
12 to run on hardware.

13 But under Ms. Kim's theory, you could never sue a  
14 software company without separately suing a hardware company,  
15 even if all the functionality that's being accused is contained  
16 in software. That's the situation here. It's all about the  
17 software.

18 You don't hear Ms. Kim saying otherwise accept in  
19 terms of platitudes about how software has to run on hardware.  
20 No question. But that's not what the functionality is about.

21 With respect to the '144, the Dell patent, again,  
22 what we're talking about is guessing that maybe Dell was  
23 working in partnership with Broadcom. There's none of that  
24 that's in the record, Your Honor. It's a complete hypothetical  
25 and speculation on behalf of Ms. Kim.

1           What we do know is that they have the code, the  
2 SmartFabric operating system code in relevant part. All that  
3 does is make calls with respect to the Broadcom chip, and the  
4 Broadcom chip is what they're now seeking discovery of. The  
5 rest of this is absolutely irrelevant. It's that it's housed  
6 in a piece of hardware, without question. But that has nothing  
7 to do with what their accusations in their infringement  
8 contentions actually say and what it is.

9           All three of these are instances where what Ms. Kim  
10 is looking for is the hardware on which software is being run  
11 without any allegations anywhere in their contentions that  
12 anything other than software is at issue. They told us that.  
13 The OGP put the burden on them to tell us. And so this is not  
14 a question of reasonably similar.

15           This is a question of expanding the case to hardware  
16 items that have no bearing on what is going on here, with the  
17 caveat that they're seeking information from Broadcom. Why?  
18 Because Dell simply does not have the information that they  
19 need or that they want in connection with the chip, and the  
20 functionality that they are accusing is on -- we understand to  
21 be on the chip.

22           Thank you.

23           MS. KIM: Your Honor, may I respond?

24           THE COURT: Yes, ma'am. You may.

25           MS. KIM: Thank you, Your Honor.



1           The Broadcom chip, just for Your Honor's knowledge,  
2 is only with respect to the '800 patent, I believe. So it's  
3 not going to be the '133 patent.

4           Secondly, I just want to say, Your Honor, that our  
5 charts, we do -- we did chart all representative products.  
6 There's no question about that. And I think this is the whole  
7 point of discovery is we don't know the relationship of how the  
8 hardware works with the software, and there is no dispute that  
9 the hardware is related and reasonably similar. I don't think  
10 there's any dispute there.

11           We just need to know -- that's the purpose of  
12 discovery is to figure out exactly how these things are working  
13 together to carry out the accused functionality, Your Honor.

14           THE COURT: And while we're on that subject, Ms. Kim,  
15 can you identify for me for each of these patents, either one  
16 of them or all of them -- ideally in all of them -- an area  
17 where the claim element or the infringement contentions  
18 reference hardware or -- you know, if you can give me an  
19 example from each one --

20           MS. KIM: Sure.

21           THE COURT: -- to show me where they reference  
22 hardware versus just referencing software, that would be  
23 helpful.

24           MS. KIM: You know, I can point you to them. I don't  
25 know if I can share my screen since this is a public hearing

1 and this is Dell's --

2 THE COURT: I was going to warn you to be careful  
3 about screen-sharing since this is --

4 MS. KIM: Yeah.

5 THE COURT: -- the public Zoom.

6 MS. KIM: Okay. Well, for example, I have a couple  
7 of examples for you here. This is for the '144 patent I'm  
8 looking at. Citation Number 8 we cite to the supported  
9 platform being S6000-ON, S6010-ON, S6048 -- sorry, '4048T-ON,  
10 S4100-OM Series. Let me just make sure these are on here. The  
11 S-5200F-ON Series.

12 We also have on here, which is a Z Series this time,  
13 the Z9100-ON Series, the Z9200-ON Series, and then a few more S  
14 Series of S3000-ON, S4200-ON Series. Another example is going  
15 to be with respect to -- this one is the '133 patent. And we  
16 specifically referenced the Edge 500 LAN server. And if you go  
17 to your chart, Exhibit 1, Your Honor, that will be the very top  
18 for Number 500. That's the Series.

19 THE COURT: Okay.

20 MS. KIM: Did I answer your question?

21 THE COURT: Well, I was really more curious on  
22 whether there's specific claim elements that are going to  
23 require you to point to hardware. For example, you know, a  
24 claim element that requires a motherboard -- I'm just plucking  
25 that out of the air -- but a claim element referencing

1 hardware, if you have an example of that.

2 MS. KIM: Sorry, let me see if I can pull that up.

3 Bear with me, Your Honor. My computer can sometimes  
4 be a little slow with all of my windows open.

5 THE COURT: That's okay.

6 A second ago were you reading from your infringement  
7 contentions or --

8 MS. KIM: That was just some internal notes that I  
9 had, Your Honor.

10 THE COURT: Oh, okay. I understand.

11 Well, let me ask you this a different way. If you  
12 don't get the hardware information regarding the documents or  
13 the products in Exhibit 1, what harm is there to the plaintiff?

14 MS. KIM: Your Honor, to the extent that there are  
15 going to be -- and I'll have to take a look at the contentions  
16 which I did not put together so I'm not readily familiar with.  
17 But I can provide that to you at a different time as far as  
18 citations go.

19 It's going to be prejudicial to us if we're missing  
20 an element, for example, that requires a relationship between  
21 the software that's accused and the hardware, which we wouldn't  
22 have any transparency into without the discovery into it.

23 THE COURT: Okay.

24 MS. KIM: We also -- one other thing, Your Honor, on  
25 the financials. If we don't have the hardware, which is -- you

1 know, the software is sold with the hardware and we don't have  
2 the hardware financials, then we don't have a basis for really  
3 having a damages.

4 MR. HERSHKOWITZ: Judge, if I could just briefly  
5 respond to the couple of points with your permission?

6 THE COURT: Sure. Absolutely; go ahead.

7 MR. HERSHKOWITZ: So, first, again, Ms. Kim got it  
8 wrong. The Broadcom is for the '144 patent. There's nothing  
9 that the Broadcom -- Broadcom has nothing to do with the two  
10 patents that are asserted against VMware. And so I just want  
11 to make sure that that is clear on the record.

12 Second, with respect to financials, for the '144  
13 patent, we did give the financials with respect to the hardware  
14 product because the software is not a separately priced item.  
15 So we gave the financials for that hardware product which  
16 included the software. VMware is a separate company. No  
17 question that software has to run on hardware.

18 But if they take a look and Ms. Kim indicated we were  
19 only able to get out the detailed financial report in the past  
20 I think either 24 or 48 hours, it does include information with  
21 respect to the hardware, too. So this isn't a question into  
22 one of their other topics with respect to financials. So this  
23 isn't about the financials.

24 And this topic that we're talking about now, and I  
25 know it's gone on for a while, isn't about financials. It is

1 about their contentions and what they put at issue. And what  
2 they have put at issue in the two patents against VMware is  
3 software, not hardware. What they -- and they told us this.

4           So -- and with respect to the '144, what they put at  
5 issue was Dell software. We even asked them about it  
6 repeatedly. We said we understand it's the OS that is at  
7 issue. They never corrected that since 2020. And only after  
8 new counsel came in and after discovery was largely closed has  
9 this become an issue because of a "FOMO," which is what we just  
10 heard -- a fear of missing out on something. But they defined  
11 it this whole time. And information about those products is  
12 publicly available. And yet, they did not detail a single  
13 limitation as implicating or needing the hardware.

14           I'm not saying for the '144 patent they didn't  
15 mention hardware. What I'm saying, Judge, is that the only  
16 piece of hardware that appears to be relevant at all is the  
17 chip, and that chip they're now seeking information from from  
18 Broadcom. And we gave them the financial information about all  
19 of those products. So it's not like we withheld the number of  
20 units or what the OS is installed on. The only thing that they  
21 have said so far that they've articulated that they needed was  
22 information about the chip which we don't have and which they  
23 are now seeking from Broadcom.

24           Thank you.

25           THE COURT: Okay. Let me do this. Let's -- I'm

1 going to go off the record real quick and confer with my law  
2 clerk.

3 (Off-the-record bench conference between Court and Law  
4 Clerk from 3:07 p.m. to 3:10 p.m.)

5 THE COURT: Okay. A couple of quick questions. When  
6 are -- so I see fact discovery is set to cut off May 6th.

7 MR. HERSHKOWITZ: Yes, Your Honor.

8 THE COURT: And has that deadline already been pushed  
9 once?

10 MR. HERSHKOWITZ: That's correct, Your Honor. The  
11 parties entered a stipulation back in November of 2021 because  
12 plaintiff was bringing in new counsel, Ms. Kim and her team.  
13 And so the parties agreed at that time to an extension of the  
14 schedule along with some other things to try to narrow the case  
15 including dropping six patents and two tranches of three, as  
16 well as what was supposed to be effectively closing discovery  
17 except for some outstanding disputes and depositions. But,  
18 unfortunately, that part has not quite happened.

19 THE COURT: And what about when are expert reports  
20 due -- currently due in the case?

21 MR. HERSHKOWITZ: My understanding is the first round  
22 of reports is due at the end of May. May 20 is the date  
23 sticking, but please don't hold me to that. And then roughly,  
24 you know, four weeks later for responsive reports and then a  
25 few weeks after that for the rest of expert discovery.

1           The judge has set, Your Honor, two trial dates. The  
2 first is in October, which is supposed to be on a first tranche  
3 of the patents, we understand the patents that are only  
4 asserted against Dell. And then the second is set for  
5 December, which are the patents that were asserted against  
6 VMware.

7           THE COURT: Okay.

8           And let me ask, Ms. Kim, does that sound right for  
9 the expert report dates around the end of May?

10          MS. KIM: Yes, Your Honor.

11          So the open reports, Mr. Hershkowitz is correct.  
12 Heather Kim on behalf of plaintiff. The opening reports are  
13 May 20th. The rebuttal reports are June 17th. And the close  
14 of expert discovery is currently July 8th.

15          THE COURT: And as I understand it, at least with the  
16 software information that you do have, you'll still be able to  
17 prepare the reports. Is that correct? Or do you require this  
18 hardware information to be able to do expert reports?

19          MS. KIM: I imagine -- I have to defer to the more  
20 technical members of my team, but I would imagine that we'd  
21 need fulsome discovery in order to prepare our reports.  
22 Otherwise, we would hopefully get them at some later time and  
23 maybe seek leave to amend to fix our reports to the extent they  
24 need to be fixed.

25          THE COURT: I tell you the dilemma I'm struggling

1 with is I want to keep the case on track. I generally have a  
2 very broad view of discovery. But this is an issue that's come  
3 to us late in the case, as defendants have pointed out, coming  
4 down to the wire on fact discovery and close to expert  
5 discovery.

6 And so that kind of cuts against that, you know, my  
7 general inclination to allow for broad discovery. And at least  
8 at this point, I haven't heard anything to make me think that  
9 the plaintiff needs the hardware documents to prove specific  
10 claim elements. So in light of that and to try and keep this  
11 case on track, I'm going to deny the request for the hardware  
12 documents since I understand the software information and the  
13 financial information has been provided.

14 So I think that -- so we'll deny Issue Number 1  
15 regarding hardware on reasonably similar products. And as I  
16 said, that's in large part to do with the late stage of the  
17 case and what I've seen. I haven't seen any evidence to  
18 indicate that the hardware is a required claim element.

19 MS. KIM: Your Honor, may I speak just a couple of  
20 clarification points as to ruling?

21 THE COURT: You can.

22 MS. KIM: First off, Your Honor, we still are missing  
23 financials for the '133 patent and the '800 patent. Dell  
24 obviously makes their money by putting the AQS functionality or  
25 the software on to the hardware and selling them. So I want to



1 just get a clarification from Your Honor that your ruling is  
2 not going to be affecting their obligation to give us  
3 financials on the hardware that is containing the software.

4 THE COURT: Yeah. My understanding was I guess I was  
5 thinking that they had already provided all of the financial  
6 stuff. If they haven't, since they've already provided some, I  
7 expect them to provide the remainder, even as Mr. Hershkowitz  
8 said, since these are not sold separately. I would expect  
9 those financial documents to be produced.

10 MR. HERSHKOWITZ: Your Honor, just to respond  
11 quickly, we produced the financial information that Ms. Kim's  
12 referring to earlier this week. Admittedly, it took us a while  
13 to get it together for VMware. So what Ms. Kim indicated is  
14 missing is there. It was provided. If they have issues with  
15 that, they can let us know and we can look into it.

16 They can also -- obviously, they haven't taken the  
17 deposition yet of the financial person. They can ask the  
18 financial person about it. And if they believe after that that  
19 something is missing, they can come back to us and of course we  
20 will work with them.

21 THE COURT: Absolutely. And if you have any issues  
22 with that, you can come back to me, and I'm making a note of  
23 the time on the record when we discussed this. So if you need  
24 to come back, I should be able to find it to refresh my  
25 recollection.

1 Which reminds me before we move on to the next  
2 issues, I'll remind Counsel within a week of us concluding  
3 this, I would like a joint submitted order. This one may be  
4 pretty voluminous, but work out a joint submission of a  
5 proposed order. If you have disputes over what it is, just put  
6 each party's position, send it to us in an editable form to my  
7 law clerk, Mark Scott. And we'll get the order entered into  
8 the docket.

9 So that takes care of Exhibit 1. I will tell you --  
10 let's see, and that may take care of -- or not Exhibit 1 but  
11 Issue 1. That may take care of Issue 3, the interrogatory or  
12 -- okay. So it will be part and parcel of Issue 1.

13 I will tell you, everybody, that I'm going to give  
14 you conflicting information. The conflicting information is,  
15 one, I'm going to give you as long as you need for us to hash  
16 through these discovery disputes. And I have a hard stop at  
17 4:30. But tomorrow some things happened that freed up most of  
18 tomorrow. So what we don't get done by 4:30 today, we'll  
19 reconvene mid-morning tomorrow and we'll work through it  
20 tomorrow.

21 All right. So let's see, we've got Issue Number 2 is  
22 substantial completion of document production before  
23 depositions. It seems like one that should be pretty easy to  
24 work through.

25 Ms. Kim, would you like to speak to that?

1 MS. KIM: Yes, Your Honor. I just want to go back to  
2 my second clarification point on Issue Number 1. To the extent  
3 that I'm able to go back -- since I haven't been able to do it  
4 on the fly today -- to look at our claim charts to see if there  
5 is a hardware requirement, can we set a timeline for me and my  
6 team to go back and look and if there are claim elements that  
7 require hardware, to provide that information to defendants so  
8 that we can get the information we need to prove the  
9 infringement?

10 THE COURT: Well, I tell you what. I suspect knowing  
11 both your team and the lawyers that you're working with that  
12 hopefully somebody could find that by tomorrow. So if we  
13 reconvene, I'm going to be really surprised if we get through  
14 everything this afternoon, but I may be surprised. But if you  
15 can get that to defendants and to the Court by tomorrow, we'll  
16 consider that in light of the ruling that I just made.

17 MS. KIM: Thank you, Your Honor.

18 For Issue Number 2, I think it was -- like you said,  
19 Your Honor, it's pretty self-explanatory here. We just need to  
20 get the documents as soon as we can. As defendants have said  
21 today, discovery allegedly was going to close last year.  
22 Things got pushed back so that me and my team could come in and  
23 step in.

24 And like I said earlier today, they only produced  
25 some VMware financials as late as yesterday, so we hadn't had a

1 chance to take a look at those yet. That accounts for four of  
2 the eight cases. Fact discovery closes on May 6th, so it's  
3 just three weeks away. And we haven't taken any of their  
4 depositions, any 30(b)(6) depositions, any 30(b)(1) depositions  
5 of any of their witnesses.

6           There's a lot to do in the next three weeks. We need  
7 to know that they have completed their document production so  
8 that we can have time to analyze it and prepare for the, I  
9 think, dozen or so depositions that we have to take over the  
10 next three weeks, Your Honor.

11           THE COURT: Have you -- do you have any depositions  
12 on the schedule already?

13           MS. KIM: We have our first one on Friday, Your  
14 Honor. There was supposed to be one today, but they -- this is  
15 a different issue on our disputes given us designations early  
16 enough so we can print the source code early enough for use of  
17 depositions so that one got kicked. But the first one now is  
18 scheduled for Friday, the 15th --

19           THE COURT: Okay.

20           MS. KIM: -- Tax Day.

21           THE COURT: Okay.

22           And so, Mr. Hershkowitz, do you have a date that you  
23 can commit to having your -- I understand, you know, things get  
24 found from time to time, but having document production  
25 reasonably or complete as best you can.

1 MR. HERSHKOWITZ: Judge, I think this was a  
2 submission in search of a dispute. In other words, we had  
3 informed them that we were substantially done back in November  
4 and had produced hundreds of thousands of pages. We had  
5 produced the code. We had produced native files. And there  
6 was some things around the edges that were outstanding. Our  
7 production has increased by two percent when they asked us to  
8 go back and look for information including in their, you know,  
9 fourth submission that was by Mr. Siegmund on 4/7.

10 And in each case, we went back, we looked. We have  
11 been substantially complete since before the extension of the  
12 schedule. That's not to say when they asked us to go back we  
13 haven't done a further search. We have.

14 Some of what we've produced has to do with the fact  
15 that there are IPRs and EPRs pending against a number of these  
16 patents. Some of it has to do with we had to produce updated  
17 financial information. Some of it had to do with they asked  
18 for things. We went back and we found a handful of additional  
19 documents. But we have been substantially complete. That's  
20 not in dispute.

21 THE COURT: Okay. And I will take you at your  
22 representation as an officer of the Court that you're  
23 substantially complete, understanding there's a fact deadline.

24 I will -- one bit of advice or one thing that I will  
25 put out there so you can know my thoughts on this is I

1 understand that oftentimes when an individual gets deposed,  
2 they'll show up sometimes and say, oh by the way, last night  
3 thinking about this, I found this letter or this document in my  
4 desk. That happens. I understand that. I expect both parties  
5 to understand that.

6           However, if you show up with a box of documents that  
7 you could not possibly squeeze one more page into because of  
8 it's full of single -- you know, double-sided single-spaced  
9 documents, that's going to raise a question. And if a  
10 plaintiff or defendants needs more time as a result, you know,  
11 feel free to reach out to the court if something like that  
12 happens.

13           MR. HERSHKOWITZ: Judge --

14           MS. KIM: Your Honor, if I may quickly respond on  
15 that point?

16           THE COURT: Certainly.

17           MS. KIM: Thank you, Your Honor.

18           We just need a commitment from defendants as to when  
19 they will be complete in their document production. VMware's  
20 financials are what we would consider a pretty hot doc or a  
21 critical document. We didn't get that until yesterday. We got  
22 3,500 pages at the end of February.

23           We need a commitment from defendants either we do  
24 have the documents and we will give them to you hopefully by,  
25 you know, Thursday or Friday with their first deposition there

1 or we don't have them and confirming in writing that they don't  
2 have them. And this sort of goes into our very last dispute of  
3 the chart, which I think you will probably end up hearing  
4 tomorrow.

5 But we really request a commitment from them as to,  
6 yes, we have them and we will give them to you or, no, we don't  
7 have the document.

8 THE COURT: Okay.

9 Let me ask you this, Mr. Hershkowitz. As you sit  
10 here, are Dell or VMware, do they have any pending production  
11 that you know is coming out?

12 MR. HERSHKOWITZ: Judge, none that I'm aware of. You  
13 know, we did the reasonable search back in, you know, last  
14 year. We made those productions. When they asked us to go  
15 back and revisit the well, we did. Some additional things were  
16 found. You know, almost perfect shouldn't be the enemy of, you  
17 know, seeking perfection. We appreciate that.

18 But, you know, it's very interesting. At a past  
19 hearing before Judge Albright, he asked us to accept the  
20 representations that were being made with respect to what  
21 information exists or doesn't exist with respect to privilege.  
22 And he said you should do that. And yet, we're not being given  
23 now the same courtesy.

24 I can say it again. It is our understanding after  
25 doing these searches and talking with the clients that we are

1 done. That is not to say that if they ask a witness a question  
2 that we've asked and so far if a witness had responded that in  
3 fact there were additional documents, we've reviewed them. If  
4 they were relevant and not privileged, we produced them.

5           So I'm a little bit confused by Ms. Kim's again  
6 constant, you know, harping on whether or not production is  
7 substantially complete. We told her repeatedly that it was.  
8 And that is not to say there weren't some odds and ends and  
9 including the financial stuff which we knew, and we said when  
10 they raised in Mr. Siegmund's thing, which hopefully all those  
11 are mooted. We are not aware of anything for that latter  
12 dispute that's still ripe. We told them we would look into and  
13 we would give it to them. And that is exactly what we did.

14           THE COURT: Okay. So as I understand it then,  
15 defendants -- Mr. Hershkowitz as he's represented -- document  
16 production is complete. And so we'll accept that. I think  
17 that moots Issue Number 2.

18           And as I said, Ms. Kim, it's a reasonableness thing  
19 that you just have to evaluate. If somebody comes in with one  
20 or two new documents as a result of a witness being prepped,  
21 that's common. I understand that's common. If you get a large  
22 production at the last minute and you need more time with the  
23 witness or you need to take a witness outside of the discovery  
24 period as a result, you know, I would expect Mr. Hershkowitz to  
25 accommodate. And if he doesn't, you know, we'll help you in



1 that regard.

2 MS. KIM: Thank you, Your Honor.

3 And this is with respect to source code, as well. I  
4 understand that we still have some source code requests that  
5 have not been loaded on to the review computers for our folks  
6 to take a look at.

7 MR. HERSHKOWITZ: So, Judge, if I could respond to  
8 that --

9 THE COURT: Okay.

10 MR. HERSHKOWITZ: -- very (indiscernible), which is  
11 the source code was available for months. They basically  
12 didn't look at it. Then they started looking at it. They've  
13 made some requests. Some of the requests it turned out they  
14 just missed it, the code was there. They've made a few others.  
15 And we have been diligently providing that as it's been  
16 requested.

17 Ms. Kim is absolutely correct. I do understand that  
18 there is one outstanding request that was recently made, and we  
19 are looking for and are going to provide that code as soon as  
20 we can get our hands on it, which my understanding is should be  
21 shortly. We're hoping for this week. It may slip until the  
22 beginning of next week. But that is my understanding on that  
23 one outstanding issue.

24 THE COURT: Okay. So you should have that additional  
25 source code no later than next week. If you run into an issue

1 or problem with that and you can't work it out, come back to  
2 us. And I understand source code review is a sticky wicket all  
3 the way around. So that's always a difficult one.

4 Okay. Well, I am down to -- let's see, this looks  
5 like defendants' Issue Number 1, WSOU's interrogatory  
6 responses.

7 MR. HERSHKOWITZ: Thank you, Your Honor.

8 For the record, Benjamin Hershkowitz.

9 So this really is a very narrow dispute, unlike the  
10 disputes from Ms. Kim where she's asking, you know, sort of  
11 broad categories and information and commitments. Our issues  
12 here are quite narrow. There are certain interrogatories for  
13 which we did not get robust responses. Despite not getting  
14 those robust responses, we've narrowed that to what we believe  
15 is sort of front and center and critical to receive as  
16 responses.

17 And it goes to a number of the interrogatories. And  
18 so what I'll do is I'll take them in turn, although I may group  
19 them a little bit differently than is on there just in the  
20 interest of time.

21 So the first here is Interrogatory Numbers 1 and 18.  
22 And the interrogatories are basically when did they first  
23 become of infringement and effectively through what means. Now  
24 they've -- the reason we want this is we only want the facts.  
25 We're not looking for privileged information. We just want the

1 facts when did it and how.

2 And the reason we want to know this is there were  
3 interactions between the parties prior to the lawsuit.  
4 Plaintiff had a licensing agent called AQUA who had reached out  
5 in 2017, reached out again in 2018. And we'd like to know did  
6 they believe at that time that Dell was infringing. Did they  
7 believe? Like when did they first become aware of infringement  
8 and as to what patents.

9 They've asserted, as I mentioned, 12 patents, 8 of  
10 which are focused on Dell. And yet, they bought portfolios of  
11 nearly 10,000 patent assets. And so they made a specific offer  
12 to Dell in 2018, Judge which, while more than Dell was willing  
13 to pay, was not a tremendous amount. It was \$2-1/2 million.  
14 And I could say that because there was no restrictions, no NDA  
15 in place or anything else. So I'm not divulging, you know,  
16 confidential information. And yet, that was for a portfolio of  
17 10,000 patents.

18 I have no doubt that their position here is going to  
19 be that each patent has been the greatest thing since the wheel  
20 was invented, but we should be able to understand when did they  
21 first become aware of this infringement. And, also, you know,  
22 the case is still ongoing. And so while we haven't interposed  
23 defenses of estoppel or waiver, it is relevant to those. And  
24 we can conform, obviously, the pleadings to match the facts of  
25 what's going on here.

1           And so there's no pushback that this information is  
2 absolutely relevant. Their pushback has always been in the  
3 context of that it's privileged. But the identification of a  
4 fact, what they believed was infringed, when they first learned  
5 of the infringement by Dell or by VMware is I think absolutely  
6 critical and could help put context on that offer. It could  
7 help put context on whether or not there was any waiver or  
8 anything else by them.

9           And, also, it is relevant. We have put at issue --  
10 we made a motion to dismiss at the very beginning of the case  
11 that there was no direct or indirect infringement. The judge  
12 ruled in our favor on indirect infringement but has kept direct  
13 infringement under advisement. But we moved from day one under  
14 the belief that they did not perform an appropriate pre-filing  
15 investigation.

16           We've written to them multiple times laying out in  
17 detail why we don't think they performed an appropriate pre-  
18 filing investigation and why we believe these cases are  
19 frivolous. And yet, they won't even give us the basic fact of  
20 when did they believe we infringed and through what mechanisms.

21           For example, Judge, they purchased these patents from  
22 Nokia. Well, if Nokia's the one that told them, well, that  
23 goes back because one of their arguments has been they don't  
24 have to tell us that because they are not sitting on the  
25 opposite side of the hypothetical negotiation, that Nokia will

1 be sitting on the -- or various Nokia entities -- on the  
2 opposite side of that. But if Nokia told them, well, that is a  
3 data point we're entitled to.

4 And as we all know, Judge, privilege does not attach  
5 to the sale of assets. It attaches to the sale of companies,  
6 but this was an asset sale. So there's no privilege on that  
7 communication with Nokia. And there's no privilege as to a  
8 fact as to when they knew about our alleged infringement and  
9 through what mechanism.

10 So, Judge, that's the issue with respect to those two  
11 which is Numbers 1 and 18. My hope, Judge, is the next one  
12 which is Interrogatory Number 3, I'm hoping is moot. And the  
13 reason is for Interrogatory Number 3, if you look at the end of  
14 the dispute chart, plaintiff told us is they would supplement.  
15 They told us this back when this was submitted on 3/29.

16 But while we have made repeated supplementations, we  
17 supplemented our initial disclosures, we supplemented  
18 interrogatories, and we supplemented production. While we've  
19 done this supplementation, we still have not received a  
20 supplementation from WSOU on Interrogatory Number 3 which is  
21 just telling us the earliest date other than what's on the face  
22 of the patent that they are claiming priority to and where the  
23 support is for that because, in some instances, there's  
24 intervening art, for example.

25 So I'm hoping that what we can hear from Ms. Kim on

1 that one is that we will get it promptly, hopefully immediately  
2 because this has been outstanding for months. And they've  
3 already agreed that they would provide it, but another two  
4 weeks has gone by and we still don't have it.

5 So the next issue, Judge, is Interrogatory Number 6  
6 which deals with the objective indicia of obviousness. Again,  
7 this falls in the same category as Interrogatory Number 3.  
8 Plaintiff indicated that they would supplement, but they  
9 haven't done so.

10 We just don't want to be in a position, Judge, where  
11 after we are proving -- because some of the issues are  
12 obviousness -- after we prove obviousness, they come back and  
13 say no, Judge, there is no obviousness -- or jury, there is no  
14 obviousness because of all of these secondary considerations  
15 and the nexus. If they have any facts, they should tell us  
16 what those are now.

17 Now there's some noise that they raise about we  
18 haven't done -- in their interrogatory response, we failed to  
19 meet our burden to show any of the alleged prior art  
20 combinations are invalidating. Judge, every plaintiff and  
21 patent owner in the history of time has made that exact  
22 statement. But that is simply not accurate and shouldn't be  
23 basis for them to not provide us that information.

24 They've agreed to do it. My hope is what we will  
25 hear is that in fact they are doing it and doing it

1 immediately. Like Ms. Kim keeps asking for a date certain,  
2 Judge, we would like a date certain, you know, on this.

3           The next topic, Judge, is Interrogatory Number 13  
4 And if you remember, Judge, I mentioned that they had a  
5 licensing agent. That licensing agent was AQUA. We asked for  
6 them to describe their relationship with that licensing agent.  
7 They pointed to a patent monetization agreement using Rule  
8 33(d) and nothing else. But that doesn't fully answer the  
9 question: Was AQUA authorized? Did they -- were they  
10 authorized to make the offers?

11           We have seen other documents indicating that there  
12 was an NDA between AQUA and Nokia. Was that authorized by  
13 WSOU? This goes also to bias and motive. We're taking  
14 depositions of AQUA. We're entitled to know what exactly that  
15 extent of that relationship is and what's going on. And so  
16 because of that -- because of those offers, the interaction  
17 directly with Dell from plaintiff using the licensing agent  
18 AQUA, we want that information.

19           Now to be clear, Judge, what we're not seeking is  
20 documents. There's no issue of burden here. We simply want to  
21 know the relationship between the two parties. And so  
22 hopefully, that's not a very high burden for them to be able to  
23 meet. And I think I've articulated why we believe this  
24 information is rational and reasonable in the circumstances.

25           The next one, Judge, is Interrogatory Number 14,

1 which is to identify entities and describe relationships with  
2 those entities where there's been financial support. And,  
3 again, it may be that they say there are none. It may be that  
4 they identify members of the plaintiff or parties, for example,  
5 Mr. Shanus is we understand an independent consultant that is  
6 working there.

7           This information is relevant for two reasons:  
8 ownership -- well, three reasons: ownership, bias, and damages.  
9 Now ownership's very interesting here, Judge, because HPE  
10 brought a motion indicating that they did not believe that  
11 there was proper standing in connection with different patents  
12 but dealing with this same portfolio. And as a matter of fact,  
13 we've seen that there's the potential for three different  
14 ownership issues.

15           Number one, this is not the first rodeo from the  
16 principals, Mr. Etchegoyen and others, behind plaintiff here.  
17 His last entity, Uniloc, a lot of cases had to be dismissed  
18 because of a default on a loan which resulted in a divestiture  
19 of complete ownership and, therefore, divested the court of  
20 jurisdiction. And that happened after a lot of litigation  
21 across a lot of cases. And so there's a little bit of  
22 precedent here that there are these ownership issues.

23           Two is there's a suggestion that they might not have  
24 had the right to sue for past infringement. That goes directly  
25 to damages.



1           And three is there are other issues that are wrapped  
2 up in here with respect to bias to understand exactly who, you  
3 know, is getting proceeds and information associated with that.

4           And so, again, we think it is absolutely reasonable  
5 to get that information, you know, from us -- from them, excuse  
6 me.

7           And, finally, Your Honor, the last two are Numbers 16  
8 and 17 which is just asking for a description of its founding.  
9 This is basic information. There are two parties to a lawsuit.  
10 We are entitled to understand how they're going to characterize  
11 and present themselves before this jury.

12           They are taking the position it's not relevant  
13 because they were not a party to the hypothetical negotiation  
14 which would have been back with, as i mentioned, the Nokia  
15 entities. But don't you think we're entitled to at least basic  
16 information about why -- who they are, what they were set up  
17 for, what exactly their mission, purpose, and everything else  
18 is, so that we are able to prepare ourselves for trial to  
19 understand what themes that they might try to put up.

20           And interestingly, they asked 30(b)(6) topics on very  
21 similar things: the identity, organization, and structure of  
22 Dell and VMware, Dell and VMware's business and financial  
23 relationships. They also asked about, you know, policies and  
24 practices regarding licensing. And yet, they don't want to  
25 give us that information in response to an interrogatory

1 response.

2 So, Judge, I know that's a lot. Let me pause and see  
3 if you have any questions before giving Ms. Kim a chance to  
4 respond.

5 THE COURT: I don't think I have any questions at  
6 this point. Let me hear from Ms. Kim. I guess it's Ms. Kim on  
7 this one?

8 MS. KIM: Yes, it is, Your Honor. For now you still  
9 have me for a bit.

10 Heather Kim on behalf of plaintiff from Kasowitz  
11 Benson & Torres.

12 I'll just take these up one by one, Your Honor, if  
13 that's okay with you.

14 THE COURT: That sounds good.

15 MS. KIM: For Rogs Number 1 and 18, which are pretty  
16 similar, I will just -- I see that you have our briefing, as  
17 well. Judge Albright has already ruled on this at least twice  
18 that I'm aware of, once at the March 11th (indiscernible) and  
19 then another time at a recent March 21st hearing with respect  
20 to subpoenas that Dell and other defendants have served to  
21 AQUA, Basepoint, and some other third-party entities.

22 The information that defendants are asking here are I  
23 think -- I took some rough notes -- about AQUA and our -- about  
24 AQUA. So in AQUA, the Court already denied discovery into AQUA  
25 because the negotiations that happened before a consummated

1 license are not discoverable as we argued at that hearing and  
2 Judge Albright agreed. It would have a chilling effect on  
3 settlement negotiations if we were able to say what the  
4 negotiations actually entail before you see the agreement.

5         The best, you know, sort of evidence of what the  
6 parties agreed to would be within the four corners of the  
7 actual licensing agreement that is being consummated. We don't  
8 see a reason to depart from what the judge has already ordered  
9 at least twice that I'm aware of, and that would be at the  
10 March 11 and March 21st hearings.

11         I think Mr. Hershkowitz also brought up how he wants  
12 to know how we became aware of the infringement. I think the  
13 infringement themselves I think are set forth in the complaints  
14 that we filed. We also have put in preliminary and final  
15 infringement contentions so they have that information.

16         Anything that would have been done with respect to  
17 that as we told them before at the March 11th hearing, you  
18 know, the EOU analysis, infringement analysis, that was done by  
19 outside counsel. That's privileged information. And so the  
20 judge there, I think -- this was at the March 11th hearing,  
21 Judge Albright already said that the (indiscernible)  
22 investigation, that stuff is out, it's not discoverable.

23         And contrary to Mr. Hershkowitz's statement, there is  
24 no pending Rule 11 motion. I understand that they had moved to  
25 dismiss indirect infringement, which I believe the Court

1 indicated that it would be dismissing without prejudice. But  
2 that's not the same as a Rule 11 or a 285 motion, Your Honor.

3 I think the next interrogatory -- I'm just looking at  
4 my rough notes here -- is Interrogatory Number 3 and Number 6.  
5 As we told defendants, we will be supplementing those  
6 interrogatories with the information requested. We plan to do  
7 that this week and at the latest within seven days from today.  
8 So they will have those by next Wednesday.

9 The next interrogatory, I believe, that was covered  
10 is Number 13. This has to do with Brazos' relationship with  
11 AQUA. The entirety of the relationship between the two parties  
12 is set forth in a six-page agreement that sets forth the date,  
13 the term, the fees associated with it, what AQUA was hired to  
14 do by Brazos, what it was engaged to do. All of that is in  
15 there.

16 With respect to requiring a narrative response and us  
17 trying to summarize what the agreement says, I think, would not  
18 be as fulsome and correct as the agreement itself, which is why  
19 we answered pursuant to Rule 33(d).

20 With respect to any other communications that  
21 defendants are looking into between AQUA and Brazos, to the  
22 extent there were any, those would have been negotiations that  
23 AQUA may have been putting out there with the other parties to  
24 be licensed. And Judge Albright already ordered that  
25 negotiations are not discoverable, so there's nothing else to

1 be left there other than the agreement that we're standing on.

2 For Interrogatory Number 14, this has to do with how  
3 Brazos is funded. Judge Albright has already also denied  
4 discovery into the very same information that's being sought  
5 here. This has to do with Dell's among other defendants, I  
6 believe -- those are Google, Microsoft, HPE, ZTE, among others  
7 -- into their subpoenas to AQUA as well as Basepoint.

8 As Mr. Hershkowitz indicated, they are scheduled, I  
9 believe, to depose AQUA I think at the end of this month on the  
10 28th rings a bell for me. At that time, they can ask for what  
11 relationship is there, I think.

12 But with respect to funding, how we're funded has  
13 nothing to do with anything in the case. As Judge Albright has  
14 already ordered, as well, the funding also has nothing to do  
15 with the case, so he denied the subpoenas that were served by  
16 defendants here.

17 You know, in my mind it's tantamount to us asking who  
18 Dell and VM's, to the extent they're a public company, who  
19 their stockholders are. Why would that matter? It just  
20 doesn't matter to any claim or defense in this case.

21 And then I think the last category here, Your Honor,  
22 is Number 16 to 17, which has to do with our founding mission  
23 statement and purpose. The operating agreement which we have  
24 produced to defendants -- I think there have been a couple of  
25 versions of that which I know that they have -- it actually on

1 the first page of the original operating agreement states what  
2 the character of the business is. I won't say what it is since  
3 we are in a public hearing, and that document is highly  
4 confidential, and I understand that we have some client  
5 representatives on the call today.

6           The operating agreement does state what the mission  
7 -- what the founding purpose is. It actually has a paragraph  
8 called "Character of the Business" which sets that forth. It  
9 also -- we had told them, as we say in our response here, that  
10 there is a website called Brazoslicensing.com which goes in  
11 pretty, you know, good detail as to what we're about, what we  
12 do, what our mission purpose is, who's part of it, where we're  
13 located. All of that information is there.

14           So like Interrogatory Number 13, we referred  
15 defendants to the documents as well as the website which is  
16 going to do a much better job of stating the information that  
17 they're asking for than me going in and trying to paraphrase  
18 all of that, Your Honor.

19           And I think --

20           THE COURT: Let me interrupt you just --

21           MS. KIM: Mm hmm.

22           THE COURT: -- I'm sorry -- real quick for the sake  
23 of the record. You said the -- can you give us the name of the  
24 website again?

25           MS. KIM: Sure. It's Brazoslicensing.com.

1 THE COURT: Okay. Brazos Licensing. Got it. Sorry.

2 MS. KIM: Yes, Your Honor.

3 THE COURT: Go ahead.

4 MS. KIM: I think that was all the interrogatories  
5 that were (indiscernible).

6 THE COURT: Okay.

7 MS. KIM: Unless you have any questions from me.

8 THE COURT: Well, just to make sure I understand. So  
9 basically, the position is that with regard to -- plaintiff's  
10 position with regard to Interrogatories 3, 6, 16, and 17, they  
11 either have been supplemented or will be supplemented within a  
12 week in such a way to moot the dispute to answer the questions  
13 and solve the defendants' concerns?

14 MS. KIM: Just Interrogatory Numbers 3 and 6, Your  
15 Honor --

16 THE COURT: Just 3 and 6?

17 MS. KIM: -- would be supplemented.

18 THE COURT: Okay.

19 MS. KIM: Yes, Your Honor.

20 We're also going to supplement Number 16 and 17, Your  
21 Honor, to refer to those documents as a formality.

22 THE COURT: Okay. To refer to the previously  
23 produced documents?

24 MS. KIM: Correct. And Brazoslicensing.com

25 THE COURT: Got it. Got it.

1           Okay. Would you like to respond, Mr. Hershkowitz?

2           MR. HERSHKOWITZ: As I'm sure you can guess, the  
3 answer is yes, but I will be brief.

4           THE COURT: Okay.

5           MR. HERSHKOWITZ: Hopefully, I will now honor that  
6 promise.

7           So, Judge, I'm glad to hear 3 and 6. Obviously, we  
8 accept Ms. Kim's representation that we will have that by next  
9 week, so it's nice to take that one off the table.

10           With respect to 1 and 18, to some extent it was  
11 presented as a little bit of a non sequitur, in my opinion, by  
12 Ms. Kim. The issue is not going into their various  
13 communications with third parties. We're not seeking the  
14 communications with the third parties. We're just seeking some  
15 basic facts, not the why, just the when and the who. When did  
16 they learn and who did they learn it from?

17           We're not asking for a deep detailed discussion. If  
18 they want to then say that they -- well, let me take that back.  
19 So all we're really looking for is that basic information.  
20 With respect to Rule 11, Judge, they're right. There's not a  
21 Rule 11 motion pending yet. And hopefully, we will not have to  
22 get to that place.

23           However, it's unequivocally clear that we do believe  
24 that they did not have a basis for bringing these lawsuits.  
25 And we've told them that repeatedly in letters and otherwise.



1 So we just don't want to hear that there's some exonerating  
2 information. You can't use privilege as both a sword and a  
3 shield. They're using it as a shield here. I don't want them  
4 then using it later. So either we should be entitled to get  
5 this very basic information to put context on important issues  
6 in the case including the outreach and interactions directly  
7 between the parties or not.

8 3 and 6 we've taken off the table.

9 You know, Number 13, the six-page agreement which Ms.  
10 Kim referred to, yes, there is a six-page agreement. And this  
11 is supposed to describe their relationship with AQUA. Here's  
12 the data point, though, Judge. Our understanding is that that  
13 agreement is dated after when we had the first outreach by  
14 AQUA. So either there is another agreement that exists -- we  
15 don't know -- or there was some other type of understanding  
16 between the parties.

17 All we're asking for is to understand that  
18 relationship that they've had with AQUA. I don't think that's  
19 an unreasonable request.

20 With respect to Number 14, which is information  
21 regarding the entities that financial supported, Ms. Kim says  
22 it bears no relevance to any issue. Judge, as I indicated, it  
23 does bear direct relationship to multiple issues including  
24 ownership which goes to the standing of the Court.

25 Either they have standing or they don't have standing

1 or they had standing and they've potentially lost standing.  
2 But we're entitled to know that. We're entitled to be able to  
3 challenge and understand whether or not there's appropriate  
4 standing for these patents. And it doesn't seem to be a large  
5 burden for them to be able to provide that information to us.

6 With respect to Numbers -- why my handwriting is not  
7 quite as large as I had hoped it would be. With respect to  
8 Numbers 16 and 17 regarding its founding, again, you know, they  
9 sort of don't -- are not disputing that they've asked us for  
10 similar information. And so I don't understand what the  
11 problem is about providing us with a narrative response other  
12 than just generic cites to a website or a document because  
13 we're entitled to understand what their theme is going to be at  
14 trial.

15 And if they're going to limit that -- what they say  
16 about their company, what they say about what they do -- to  
17 specifically what is contained in those couple of spots, that's  
18 a different story, Judge, or may be a different story. But  
19 that's not what I'm hearing them say right now.

20 Thank you.

21 THE COURT: Okay. All right. Let's go off the  
22 record just briefly. I promise I'll make this quick.

23 (Off-the-record bench conference between Court and Law  
24 Clerk from 3:50 p.m. to 3:52 p.m.)

25 THE COURT: Okay. We're back on the record.

1           Here's how we're going to rule with regard to  
2 Interrogatories Number 1 and 18. I am going to deny  
3 defendants' request and I'll tell you at least my view so you  
4 can understand it.

5           As I understand it, there's been no assertion of a  
6 laches or estoppel defense in any parties' answers. So those  
7 really aren't at issue. And, additionally, in my view, a  
8 determination of or a decision of infringement involves both  
9 legal and factual analyses. So asking the question when did  
10 you learn of infringement I think does start to touch on  
11 attorney-client and work-product privileges.

12           Number 13, the patent monetization agreement, I  
13 believe Ms. Kim represented that that document contains the  
14 entirety of the agreement. I'll take her at her  
15 representation. I'm going to deny that request.

16           I will say that in deposition if you need some  
17 clarity because of the dates, as Mr. Hershkowitz mentioned, I  
18 think that's fair game for some clarity during a deposition of  
19 a corporate representative is did you have any interest in the  
20 patents during the initial outreach by AQUA, when did you  
21 establish a relationship with AQUA, does this document  
22 encompass that relationship, et cetera.

23           As far as the back and forth and the underlying  
24 communications and negotiations between AQUA and Brazos or  
25 WSOU, I think those are going to be irrelevant to the issues in

1 the case.

2 Interrogatory Number 14, I'm going to deny that  
3 request. As I understand it, how Brazos is funded, who  
4 investors are, et cetera, I don't believe that's relevant to  
5 the case. However, when defendants depose a corporate  
6 representative or employees of WSOU or Brazos, they're of  
7 course entitled to get into issues that may affect the  
8 credibility of those specific witnesses and can inquire about  
9 those -- that specific witness's compensation or how that  
10 witness might stand to profit as a result of the lawsuit.

11 And then Number 16, 17, I think Ms. Kim's offer to  
12 supplement with the -- or to identify the operating agreement,  
13 point to the website, I think that is -- I'm going to deny the  
14 request because I think her supplementation is going to be  
15 sufficient for purposes of an interrogatory. I do believe Mr.  
16 Hershkowitz or whichever of his colleague deposes the corporate  
17 rep of WSOU or Brazos can inquire about those things and get an  
18 understanding as to what WSOU says.

19 And then, obviously, if we get down to trial and WSOU  
20 starts -- wants to start a trial theme about how -- who they're  
21 funded by or how they were set up to save the world by specific  
22 funders or something like that, they can open the door. And  
23 when that happens, of course, then it will be fair game. So  
24 it's really up to WSOU to make sure that remains irrelevant.

25 And then Interrogatories Number 3 and 6, I believe

1 those will be supplemented by next week, and so that should  
2 render it moot. If they're not, Mr. Hershkowitz, please come  
3 back and bring it to my attention and we'll take care of it at  
4 that time.

5 MR. HERSHKOWITZ: Thank you, Your Honor.

6 THE COURT: And now we've got -- I think that brings  
7 us to the end of what I have as Chart Number 1. And so we can  
8 move --

9 MR. HERSHKOWITZ: (Indiscernible).

10 THE COURT: Okay. So we can move to Chart Number 2.  
11 And the first point I have on here is concerns about WSOU's  
12 response to -- oh snap. I just -- hold on. There we go.  
13 WSOU's response to RFPs Numbers 89 and 91.

14 And I believe this is defendants' motion. So Mr.  
15 Hershkowitz, will you be addressing this?

16 MR. HERSHKOWITZ: Yes, Your Honor.

17 Just very briefly, because I think we -- this may be  
18 the last actual dispute. I believe everything else after this  
19 largely should be mooted based on our production, et cetera.  
20 So hopefully we can get through this one quick and then Ms. Kim  
21 can tell us whether or not some of these other issues are  
22 mooted.

23 So there are two RFPs, Number 89 and Number 91. And  
24 what we are really asking for are the documents and making sure  
25 we have a full set of documents. In other words, all documents

1 that they served and exchanged in related patent litigations.  
2 What they did was they brought a series of patent litigations  
3 against a number of defendants. And none of the patents  
4 overlap, so I want to be clear right off the bat on that.  
5 However, they're all coming out of the same portfolios.

6           WSOU has taken the position already that they really  
7 have no technical knowledge, right. They're a shell. They  
8 bought assets. Everything's privileged. The only thing that  
9 they really have is their documents that go to, you know,  
10 financial and other issues.

11           And in the very -- one of the very hearings that Ms.  
12 Kim mentioned which dealt with third party AQUA, they actually  
13 went on the record and said that similar patent infringement  
14 matters were brought against, you know, others and, therefore,  
15 discovery against AQUA should be consolidated across all the  
16 cases. And so here we have an actual party.

17           All we want to make sure is that we're not getting  
18 one set of documents here and someone else is getting something  
19 that says something a little bit different based on some  
20 bologna being sliced very very thin. WSOU now argues the  
21 information is sort of not relevant but acknowledged that it  
22 was the same issues, the same third parties, the same  
23 plaintiff, you know, that is -- that's involved.

24           And so there's no real burden here. Their production  
25 is fairly minor to begin with. They've already produced those

1 documents in other places. And similarly, what we're really  
2 looking for are the deposition transcripts in the other cases.  
3 Yes, we are deposing the same people. But we've already found  
4 in prior submissions that there are nuances that they've taken  
5 in different matters that are different.

6           The one I'm referring to, Judge, is that they brought  
7 one set of cases in Delaware against a different defendant and  
8 there they submitted a declaration by Mr. Shanus saying that he  
9 and Mr. Etchegoyen were the most knowledgeable about WSOU's  
10 licensing practices.

11           Here when we made a motion for intra-district  
12 transfer to Austin which is still pending, they had Matt Hogan,  
13 a different person within the organization, make a declaration  
14 and he said we're going to designate me, you know, with respect  
15 to trial-related issues. Now they have designated him for two  
16 30(b)(6) topics: identity of job functions and office  
17 locations; job titles, roles, and responsibilities. In other  
18 words, nothing of substance.

19           And so we just want to understand what they are  
20 saying these same witnesses in other cases just to make sure we  
21 don't have a Janus situation where there are multiple faces and  
22 each one saying something different.

23           So really, our request boils down to just getting the  
24 deposition transcripts for the very people that we are also  
25 deposing to make sure that there's no inconsistent statements

1 which goes to voracity and a number of other issues, as well as  
2 there were a number of hearing transcripts. Ms. Kim has put  
3 them at issue repeatedly. Some of those we were a party to.  
4 Some of them we were not.

5 And all we have is the dispute letter which they  
6 attached and we have the ruling. But we have none of the  
7 information about what they said, how they characterized or may  
8 have provided information. All we want to do is have that so  
9 that we make sure that we are getting the one story and there's  
10 not multiple versions of it.

11 THE COURT: All right.

12 Ms. Kim, would you like to respond to that?

13 MS. KIM: Yes, Your Honor.

14 Heather Kim on behalf of plaintiffs.

15 Your Honor, Judge Albright already denied an  
16 identical request. This is public, so I can actually share this  
17 with you on my screen-share. Let me -- which I want to note  
18 that we did provide to defendants, as well.

19 Are you able to see my screen, Your Honor? It should  
20 be one of the exhibits that is included in that zip file for  
21 you.

22 THE COURT: I do. This appears to be an email to  
23 Jeffrey Gunnell (phonetic)?

24 MS. KIM: Yes, Your Honor. So this is an email from  
25 HPE's counsel at Sidley Austin, and they had attached the next



1 exhibit that I'm showing here. Did you see the switchover to  
2 the chart?

3 THE COURT: I do.

4 MS. KIM: And they're asking for the same thing, the  
5 deposition transcripts and exhibits for any depositions of our  
6 witnesses from cases other than HPE.

7 If I go back to the other exhibit, Your Honor, this  
8 was actually denied as you can see by the Court without even  
9 having a hearing on it. So we think that the Court should  
10 follow what it's already ordered in HPE, which we told  
11 defendants about, and deny it here.

12 I also want to note that with respect to other -- I  
13 guess, anything else that they're trying to get that is similar  
14 -- let me do a new share. The Court also in cases against ZTE,  
15 which we also provided to defendants, has already denied  
16 discovery in sister cases.

17 You can see here this was an order that went in after  
18 a March 3rd hearing that was in the ZTE cases which we provided  
19 to defendants, Defendants' request for a court ordered filed on  
20 the docket memorializing the December 6th email Court ordered  
21 compelling plaintiff's production, A, responsive to ZTE's  
22 (indiscernible) request for production and, two, from sister  
23 W.D. Texas cases, is denied. So all of this has already been  
24 denied by the Court, Your Honor.

25 There is a couple of other points that Mr.

1 Hershkowitz brought up that I would like to address. One of  
2 them is a potential -- I don't know how to say this nicely --  
3 lie or something about what Mr. Shanus and Mr. Etchegoyen know.  
4 And (indiscernible) --

5 THE COURT: We'll call it an inconsistency.

6 MS. KIM: Inconsistency in Delaware. As Mr.  
7 Hershkowitz noted, Mr. Hogan is not designated on any licensing  
8 topics in 30(b)(6) capacities. We've designated Mr. Shanus and  
9 Mr. Etchegoyen on those topics back in November of last year.  
10 So there is not an inconsistency with respect to all of a  
11 sudden somebody else being the most knowledgeable about  
12 licensing.

13 I think that takes care of all of the arguments I  
14 heard unless you have any questions from me, Your Honor.

15 THE COURT: Yeah. Could you put that ZTE order back  
16 up just real quick?

17 MS. KIM: Sure, Your Honor.

18 THE COURT: I was trying to find it while we were  
19 looking through here, and I --

20 MS. KIM: Yeah. There were a lot of exhibits. It's  
21 Exhibit 11, but I have it on my screen if you can see it.

22 THE COURT: Okay.

23 MS. KIM: I think it's this bullet here related  
24 discovery requests including discovery objected to based on the  
25 sealed ruling.

1 I'd like to note for Your Honor that some of the  
2 transcripts including in the Microsoft cases are sealed, and so  
3 we've only been able to provide to the extent they were  
4 relevant -- and, you know, kind of explaining to defendants  
5 that the Court has already denied the same discovery --  
6 redacted versions of those transcripts, as well.

7 THE COURT: Okay. Let's go off the record just --  
8 well, actually, stop.

9 Mr. Hershkowitz, would you like to respond?

10 MR. HERSHKOWITZ: Yes, Your Honor.

11 So as to the HPE and ZTE, we're not parties to either  
12 of those. As to the HPE, those cases were dismissed so there  
13 was never an opportunity where HPE could have gone back and  
14 revisited that ruling. We also do not have unredacted  
15 transcripts from either. That's part of the problem, to  
16 understand exactly what was said.

17 With respect to the point that -- regarding Mr.  
18 Etchegoyen and Mr. Shanus, I think the appropriate focus is  
19 just to context. In the context when they were trying to tie  
20 themselves by calling themselves Brazos and tie themselves to  
21 Waco, they put up Mr. Hogan and said he's our guy. That's what  
22 they said in opposition to our motions for intra-district  
23 transfer.

24 And yet, when they were dealing with a similar issue  
25 out in Delaware, they didn't say that. They said Mr.

1 Etchegoyen and Mr. Shanus are our guys. I'm not saying that  
2 there's a direct statement that is inconsistent in there. I'm  
3 saying based on the context, there's inconsistencies. And in  
4 light of that, we should be able to test those inconsistencies.

5 I don't think it's a burden for them to simply  
6 provide us with the deposition transcripts of these witnesses  
7 from these cases, not from Uniloc or prior cases where they  
8 were involved. Just in connection with the WSOU cases.

9 THE COURT: Okay. Let's go off the record just real  
10 quick.

11 (Off-the-record bench conference between Court and Law  
12 Clerk from 4:05:09 p.m. to 4:05:49 p.m.)

13 THE COURT: Okay. We're back on the record.

14 And largely, based on my understanding that this is a  
15 similar issue as a request that's been previously denied by  
16 Judge Albright, I'm going to maintain consistency with that  
17 denial. I will point out that Mr. Hershkowitz has the  
18 declarations and when the depositions of those individuals or  
19 the corporate rep occur, I think those are fair game to ask  
20 them about and to press them on or at trial, for that matter, I  
21 suppose, if it's relevant.

22 Okay. So next issue -- let me get back to my -- is  
23 that going to resolve all of Chart 2 or --

24 MR. HERSHKOWITZ: Correct, Your Honor.

25 THE COURT: Okay. So now Chart 3, and I'm just --

1 I'm flipping back and forth between charts and notes. And I  
2 believe on Chart 3, so do we still have a dispute with Chart 3?  
3 It looked like it was just getting names of 30(b)(6) witnesses  
4 timely, I suppose.

5 MS. KIM: Yes, Your Honor.

6 The issue here is like we've talked about earlier  
7 today, Your Honor, is that we have the close of fact discovery  
8 coming up in three weeks. We served our 30(b)(6) notices on  
9 them in October and November of last year. We served our  
10 responses to their 30(b)(6) and provided all designations,  
11 which have not changed, back in November -- November 19th, to  
12 be exact, of last year.

13 Yet, we still have this moving target with respect to  
14 their 30(b)(6) designees. There are about a dozen witnesses we  
15 have to depose. They suggest in their chart that they will  
16 provide that information seven days before the witness is  
17 scheduled to be deposed. But since then, Your Honor, a couple  
18 including one that was supposed to happen today and one that's  
19 happening on Friday, they haven't even given us those  
20 designations seven days in advance, despite what they say in  
21 the chart.

22 We just need to know to do our planning to make sure  
23 that we take, you know, not a lot of time but we have the time  
24 to prepare and we can keep the depositions concise. We need to  
25 know which witnesses are put up for which topics that they've

1 agreed to give us designations on ASAP with the first  
2 deposition coming Friday. This is really important for us to  
3 do our planning.

4 THE COURT: And, Mr. Hershkowitz, would you like to  
5 respond?

6 MR. HERSHKOWITZ: I can be brief. I thought this  
7 issue was largely mooted. And so the short answer is in a  
8 little bit of, it looks like I'll call it a pot calling the  
9 kettle black.

10 But let me just jump to the heart of it, is they had  
11 identified 60-some-odd topics where we had agreed to provide a  
12 witness. My understanding now is that other than for less than  
13 a handful of topics, all of them have been designated. Some of  
14 those topics, the difficulty is we're not sure there is anybody  
15 that has knowledge in which case we'll tell them that in fact  
16 there is no knowledge within the company, much like they've  
17 told us on several instances.

18 And so my understanding is that we are significantly,  
19 if not completely, done with the caveat I think there is one  
20 topic as of right now outstanding for VMware and maybe a  
21 handful outstanding for Dell where we're still trying to verify  
22 if there is information and identify the right witnesses.  
23 Otherwise, everything has been identified.

24 And just as to the little bit of the pot calling the  
25 kettle black is we had offered these witnesses ages ago. And

1 normally you offer the witnesses, you get the dates, and then  
2 you speak with them, make sure you're getting the best  
3 educated, knowledgeable witnesses and identifying them for the  
4 topics. But, unfortunately, they put off the depositions  
5 several times. And so that process didn't happen fully. But  
6 it now has, and we are, as I indicated, fully complete. We're  
7 not withholding anything back. As soon as we have those last  
8 few topics, we will provide them.

9 THE COURT: And will you be able to provide those at  
10 least seven days before the individuals are deposed?

11 MR. HERSHKOWITZ: Our goal is that, Judge. In a few  
12 instances, it may be less. But like I said, we're down to a  
13 handful of topics, several of which overlap I believe with some  
14 other topics. So there shouldn't be any real burden.

15 But we are endeavoring as quickly as possible to get  
16 out those last few topics. We got out some yesterday. We got  
17 out some today before this call. So we believe this issue is  
18 effectively mooted. You have a commitment from us to get those  
19 topics out as soon as we are able.

20 THE COURT: Okay. So here's what I'll do unless you  
21 need to reply, Ms. Kim?

22 MS. KIM: No, Your Honor. Thank you.

23 THE COURT: So what I'll do is to the extent it needs  
24 to be denied or granted, I'll go ahead and grant plaintiff's  
25 request on the 30(b)(6) designations that defendant identify

1 the witnesses seven days or as reasonably ahead of the  
2 deposition of the witness as possible.

3 And, also, with the understanding, Ms. Kim, that if  
4 you get the identity of a witness at a late enough hour that  
5 you feel you need additional time with the witness ir you're  
6 going to have to push the deposition back, I'll assume or hope  
7 that Defense Counsel works with you on that. And if you run  
8 into a problem with that where you get a name so close to the  
9 date of the depo that you need more time and you can't agree on  
10 it, come back here and then I'll have a little more concrete  
11 issue to address. And I can help you with that.

12 Of course -- and we can have the argument on the next  
13 topic, but that's a, as they say, a gun that kicks as hard as  
14 it shoots. So it's going to apply the same to plaintiff as far  
15 as your identification of 30(b)(6) witnesses and the defendants  
16 getting names timely enough to take an adequate deposition.

17 MS. KIM: Thank you, Your Honor.

18 Yes. All of our designations have been static since  
19 November, so defendants have all of that for ours.

20 THE COURT: Okay. Well, let's see. I've got Issue  
21 Number 2 on Chart 3 is WSOU's refusal to designate on certain  
22 30(b)(6) topics.

23 MR. HERSHKOWITZ: Thank you, Your Honor.

24 THE COURT: Go ahead, Mr. Hershkowitz.

25 MR. HERSHKOWITZ: I'll be, again, fairly brief here.



1 I believe this issue may be largely mooted by your  
2 prior ruling with respect to what you just said with respect to  
3 89 and 92, in other words, Issue 1 on Chart 2. And, in effect,  
4 what we were asking for is the same type of information that  
5 you had just said we could get through deposition and ask  
6 questions. All we're asking is that they designate someone as  
7 a corporate representative for it and not just in their  
8 personal capacities.

9 We had the first deposition yesterday so, obviously,  
10 after this chart was submitted. And they did not instruct not  
11 to answer with respect to questions that fall within these  
12 categories. So maybe this is a -- not really a dispute. All  
13 we're asking is that they designate it so that it's corporate  
14 testimony and not just individual testimony.

15 Especially since while Mr. Shanus is acting general  
16 counsel, for example, of plaintiff, he is not technically an  
17 employee. So I don't -- we just don't want any funny business  
18 later on that them saying, oh, distancing themselves from  
19 testimony.

20 So it should be fairly straightforward for them, and  
21 we have no objection to them back-designating Mr. Shanus'  
22 testimony as that 30(b)(6) testimony with respect to these  
23 topics.

24 THE COURT: Okay.

25 Do you need to respond, Ms. Kim?

1 MS. KIM: Yes, Your Honor.

2 THE COURT: Okay.

3 MS. KIM: I will just -- very brief, I promise.

4 For Number 33, Your Honor already ruled on this  
5 issue. They're asking for corporate testimony on who would get  
6 a distribution from settlement funds or a jury award, for  
7 example. As Your Honor stated earlier today, they're welcome  
8 to -- and we have already offered this to them -- to ask the  
9 witness in their personal capacity what bias they would  
10 potentially have if they were going to give, let's say, 100  
11 percent or whatever the percentage may be.

12 But we don't think that's an appropriate topic for a  
13 corporate witness to answer. But to the extent it goes to  
14 bias, they can ask the individual witnesses that. And we  
15 allowed that testimony to go forward yesterday, as well, Your  
16 Honor.

17 THE COURT: And --

18 MS. KIM: Also -- mm hmm.

19 THE COURT: Oh, go ahead. Go ahead.

20 MS. KIM: Go ahead, Your Honor.

21 THE COURT: Oh, I was just going to say for -- by way  
22 of clarification, I don't know that it really matters so much  
23 whether it's designated as corporate testimony or individual  
24 testimony. But if a witness is testifying either in their  
25 individual capacity on behalf of WSOU or as a corporate

1 representative on behalf of WSOU, then what that individual  
2 stands to gain financially from the lawsuit, I think, is fair  
3 game for cross.

4           On the other hand, what other people who are not  
5 testifying and may have invested in WSOU stand to gain is no  
6 more relevant than how much different shareholders of Dell  
7 stand to gain if Dell has a good year or a bad year.

8           So that's what I meant earlier. That witness's --  
9 and when that witness testifies as a corporate representative,  
10 their personal credibility is an issue and proper subject for  
11 cross-examination.

12           MS. KIM: Thank you, Your Honor.

13           I think that takes care of Number 33.

14           For Number 49, Your Honor, they're asking for  
15 corporate testimony on our financials. Judge Albright has  
16 already ordered that financial information for Brazos is not  
17 relevant because it is not -- because we are not a party to the  
18 hypothetical negotiation.

19           I can actually share my screen on that again. Let me  
20 pull that one up. It's the same ZTE order for one of them, and  
21 I'll share a transcript with you next, Your Honor.

22           Here, as you can see, plaintiff's financial is here.  
23 And if I go to a hearing transcript on this one, this is the  
24 Court speaking at a March 3rd hearing. The Court says, no,  
25 they don't. This is about the hypothetical negotiation and my

1 representation to the Court that in this case, ZTE case, we  
2 would not be a party to the hypothetical negotiation.

3 The Court says here, they don't --

4 "Hypothetical negotiation took place on a date when  
5 someone else owned them. The negotiation would be  
6 between a different party and you guys unless the law  
7 has changed. I mean I get the book of wisdom. I  
8 handled a little bit of damages in my time, maybe not  
9 as well as you have.

10 "But I mean hypothetical negotiations between the  
11 party that owned the patent, the alleged infringer,  
12 and I have a representation from Ms. Kim that that's  
13 not them. What relevance do the financials have?

14 "Okay. I'm going to deny a request for that."

15 So, similarly, here, Your Honor, Brazos' financials  
16 are not relevant to anything because they're not a party to the  
17 hypothetical negotiation.

18 And then I think one of the last ones -- because 50  
19 is the same as 53 -- is going to be Number 51. This goes back  
20 to I think one of the -- maybe it was the second issue that we  
21 took up in the dispute chart, related to our consideration and  
22 strategy of our portfolio including consideration in cost and  
23 timing of potential litigation, which we understand Your Honor  
24 has denied.

25 THE COURT: Okay. And going through the individual

1 topics, as I said, individual witness's credibility is fair  
2 game, but I agree that Topic 51, Topic 49, I'm going to deny  
3 the request to depose somebody on those.

4 I believe you said Topics 33 and --

5 MR. HERSHKOWITZ: 50, Your Honor.

6 THE COURT: -- 50. Are those both taken care of with  
7 a prior ruling or -- let me flip back here.

8 MS. KIM: Yes, Your Honor.

9 50 goes to the funders again. So it would just be 33  
10 that we will be allowing defendants to depose our witness on  
11 about what they stand to gain from the outcome of the  
12 litigation.

13 THE COURT: Right. And that's -- again, that will be  
14 witness-specific, not -- you know, to everybody that's invested  
15 who's not swearing to tell the truth and sit before the jury or  
16 the Court.

17 MR. HERSHKOWITZ: So, Judge, just so I have clarity,  
18 so we can ask all these witnesses questions in their personal  
19 capacity, but it will not be considered to be corporate  
20 testimony because, as I indicated yesterday, Mr. Shanus already  
21 testified with respect to information within these topics.  
22 And, you know, so we didn't think that there was that much  
23 burden to making sure that it was designated as corporate.

24 But I just want to make sure that there's no  
25 restrictions on us to continuing to ask questions of people in

1 their personal capacity.

2 THE COURT: Yeah. Definitely -- if I follow you  
3 correctly, definitely in their personal capacity if it goes to  
4 that witness's credibility and they need to tell you if WSOU is  
5 paying them or not paying them. If they're going to make  
6 money, a jury's entitled to know and weigh the credibility of  
7 the witnesses.

8 And just -- you know, when Dell witnesses testify,  
9 what those witnesses are being paid by Dell even if it's a  
10 salary and not contingent on the litigation, I think that's  
11 fair game for credibility, too.

12 MR. HERSHKOWITZ: Thank you, Judge. I just want to  
13 make one point which goes to you, you know, if you fire,  
14 there's also the kickback on the gun. They asked us very  
15 similar things in their requests: For example, WSOU Topic 37,  
16 defendants' return on investment which is related to, like, 49;  
17 WSOU's Topic 48, requests Dell and VMware business and  
18 financial relationships with third parties.

19 You know, so they've got these other questions and,  
20 you know, they should be able to hold themselves up to a  
21 mirror, you know, with respect to Topic 51 on their policies  
22 dealing with monetization. They ask us about a number of our  
23 policies, too.

24 And so I just want to make sure because we said,  
25 fine, we'll provide you with a witness. You can ask them to

1 the extent it's not privileged information. And yet, we don't  
2 seem to be getting that same courtesy in return. And so, you  
3 know, I just wanted to point that out for the Court.

4 THE COURT: Well, and I hear you. I hear you loud  
5 and clear. That's not an issue that I think is necessarily  
6 before the Court or I was prepared to address. Off the top of  
7 my head, I can see there being some slight variation in that  
8 WSOU didn't own the patents at the time of the hypothetical  
9 negotiation. And those issues, as I understand it, might be  
10 relevant to a damage analysis. But if they become -- it  
11 becomes a sticking point, definitely feel free to come back to  
12 the Court.

13 MR. HERSHKOWITZ: Thank you.

14 THE COURT: Let's see, I think we've got one more  
15 chart with a few more issues. I've got about ten minutes. Do  
16 we want to dive into any of those or --

17 MS. KIM: Your Honor, with that last chart, I believe  
18 we can -- I think that has been mooted and we can withdraw I  
19 think the last set of disputes that you're looking at.

20 But I did want to circle back to the reasonably  
21 similar products issue. I did get a few answers from my team  
22 in the time that we've been at this hearing. So there are -- I  
23 can provide you some claims that do require the hardware, and I  
24 can tell those to you right now if that would be preferable or  
25 via email, whatever the Court would like.

1 THE COURT: I tell you what, let's do it this way.  
2 If you will, email me those to me, cc opposing counsel when you  
3 do. And then if need be, we can -- I hope we can maybe get  
4 everybody to jump back on a quick Zoom tomorrow or that may be  
5 sufficient for me to make a ruling based on the email.

6 Does that sound fine, Mr. Hershkowitz?

7 MR. HERSHKOWITZ: Yes, Judge.

8 I was just going to say three things. Sorry.

9 One is we'd like the opportunity, obviously, to  
10 respond as to why whatever they're citing -- because we've gone  
11 through these very carefully -- is absolutely irrelevant. In  
12 other words, the hardware is absolutely irrelevant, which seems  
13 like you're doing. We'd be perfectly content if it's easier  
14 for Your Honor to simply do that in writing.

15 And the reason I'm suggesting that is you might not  
16 be able to tell, I just had shoulder surgery last week, so I've  
17 got a bunch of rehab and stuff tomorrow. And so while I've  
18 been fairly mobile and now I'm going to go ice this thing and  
19 I've got some appointments tomorrow and I've been the one sort  
20 of handling these issues. But I can get somebody to cover if  
21 that presents a challenge.

22 But we were just going to suggest maybe if we can  
23 just do it through, you know, some very short writings. They  
24 can tell us why, and we can tell you why that dog don't hunt.  
25 So --



1 THE COURT: Yeah. Let's do that. I do have to  
2 comment, Mr. Hershkowitz, I would have never guessed you'd  
3 recently had surgery. You look great. I'm guessing it may be  
4 your right arm because you're gesturing a lot with your left.  
5 But --

6 MR. HERSHKOWITZ: Let's just say it is the left arm,  
7 but if I tried to move the shoulder as opposed to just the  
8 elbow, you would see some wincing going on. It's --

9 THE COURT: I understand. I understand. Well, we  
10 want to accommodate that to help you rehab that. So let's do  
11 that. Let's follow the 500 words you can -- you know, 500-word  
12 email to the Court with the charts attached. If you can get  
13 that to us let's say by noon tomorrow, and we'll get you an  
14 answer after lunch tomorrow.

15 And then I will -- yeah, and the email, obviously, if  
16 you double check your chat box, that's Mark Scott is the clerk  
17 who's going to be handling this. And for those of you who have  
18 not yet met Mr. Scott, I would tell you he has six or seven  
19 years of patent litigation experience under his belt. So he is  
20 extraordinarily helpful on this -- on these types of disputes.

21 The one other thing I will add -- and you can put  
22 this in the draft order, Ms. Kim, that the parties will submit  
23 -- is just from looking at these charts, it seems like there's  
24 been a lot of back and forth. I don't know that you'll need me  
25 as often as you might have wanted in the past, but I will say

1 that you can -- if during the depositions we have issues about  
2 whether a question crosses the line or not because some of  
3 these are sort of difficult lines to draw, please call my  
4 chambers. They'll track me down. I'll get you an answer as  
5 quickly as possibly so that it doesn't cause any issues with  
6 the proceedings, with the depositions.

7 So at least for the sake of these cases for the WSOU  
8 v. Dell and Intel, use my chambers number as a hotline, if you  
9 will, while you're taking depositions.

10 MR. HERSHKOWITZ: Thank you, Your Honor.

11 Judge, just one thing. When can we expect -- can we  
12 get a time certain because we don't want to get something at  
13 11:00 tomorrow to put in our response with it being due at noon  
14 Central. So maybe if we can get a commitment to receive it  
15 this evening, that will give us tomorrow to insert our section.

16 THE COURT: Well, how about if -- Ms. Kim, what time  
17 zone are you in?

18 MS. KIM: I'm on -- I'm in California; Pacific.

19 THE COURT: Okay. You're in California.

20 And then, Mr. Hershkowitz?

21 MR. HERSHKOWITZ: I am sitting in New York where we  
22 have had repeated alarms after the tragedy of yesterday that  
23 everybody's phone keeps going off. So I hid my phones in a  
24 different room today. But I'm in Eastern.

25 THE COURT: Well, I'm sorry. Yeah, sorry to hear

1 about that. And our hearts go out to y'all up there. And then  
2 we couldn't have picked people in two -- it worked so much  
3 better if y'all were in the opposite time zones.

4 MR. HERSHKOWITZ: I know it's -- I think it would --  
5 Your Honor, it works well here because Ms. Kim is several hours  
6 behind. So she should have time today, and we can pick it up  
7 tomorrow.

8 THE COURT: Does that sound reasonable to you, Ms.  
9 Kim?

10 MS. KIM: Yes, Your Honor.

11 We will try our best to get things to them. It's  
12 2:30 here now. We will get it to them today.

13 THE COURT: Yeah. If you can get it to them this  
14 evening.

15 And then, Mr. Hershkowitz, add your section and get  
16 it to the Court by noon, noon Central Time, so that would be  
17 1:00 your time, I suppose.

18 MR. HERSHKOWITZ: Understood. Thank you, Your Honor.

19 THE COURT: All right. Anything else from  
20 defendants?

21 MR. HERSHKOWITZ: No, Your Honor.

22 THE COURT: Anything else from the plaintiffs?

23 MS. KIM: No, Your Honor. Thank you for your time  
24 today.

25 THE COURT: All right. Thank you all very much.

1 UNIDENTIFIED SPEAKER: Thank you, Judge.

2 MR. HERSHKOWITZ: Much appreciated. Thank you, Your  
3 Honor.

4 (Proceedings concluded at 4:26 p.m.)

5 \* \* \* \* \*

6

7

8

9

10

11

12

13

14

15 **C E R T I F I C A T I O N**

16 I, DIPTI PATEL, court approved transcriber, certify  
17 that the foregoing is a correct transcript from the official  
18 electronic sound recording of the proceedings in the above-  
19 entitled matter, and to the best of my ability.

20

21 /s/ Dipti Patel

22 DIPTI PATEL, CET-997

23 LIBERTY TRANSCRIPTS

DATE: May 11, 2022

24

25